IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.MC.No. 640 of 2006()

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[CMP.41/2006 IN M.C.188/04 OF THE FAMILY COURT, ETTUMANOOR]

PETITIONER: COUNTER PETITIONER

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MICHEL JOHN,
PANACHICKAL, KURUMANNU, KADANADU.

BY ADV. SRI.P.C.HARIDAS

RESPONDENT/PETITIONER/STATE:

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1. THRESSIAMMA JOHN, KUTTUPADAVIL,
PALAKKATTUMALA, KURICHITHANAM.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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Crl.M.C.No.640 of 2006

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Dated this the 6th day of December 2006

**O R D E R**

The petitioner faces proceedings under Section 125 Cr.P.C initiated by the respondent, admittedly a woman married by him. The marriage is admitted by both contestants. The petitioner has opposed the claim for maintenance on the short plea that the claimant/wife has deserted him and was leading an adulterous life with her former fiancee. It was further alleged that in such relationship, she has conceived and had given birth to a child. Long after such separate residence, co-habitation with the paramour and the birth of the child took place, the claimant is staking the present claim for maintenance without any bonafides, it was contended.

2. The claimant/wife denied the allegation that she was leading an adulterous life and that she had conceived in her relationship with a stranger. She denied that she had given birth to any child. In fact, in the chief affidavit filed by her, the claimant specifically offered that she is willing to undergo any medical examination to prove her assertion that she has not given birth to any child.

3. Later, the petitioner filed an application to get the claimant/wife examined by a doctor. Strangely, that application appears to have been resisted. By the impugned order, the learned

Judge of the Family Court rejected the prayer made by the petitioner to facilitate such medical examination.

4. Respondents have been served. There is no appearance for the respondent. In the peculiar circumstances of this case, I am satisfied that the course adopted by the learned Judge of the Family Court in the wake of the very clear assertion made by the claimant/wife in her chief affidavit that she is willing to undergo examination by the expert does not justify and results in prejudice against the petitioner.

5. In these circumstances, I am satisfied that this Criminal Miscellaneous Case deserves to be allowed and the impugned order deserves to be set aside.

6. In the result,

a) This Criminal Miscellaneous Case is allowed.

b) The impugned order is set aside.

c) The petition CMP No.41/06 is allowed.

7. The learned Judge of the Family Court shall take necessary further action.

**(R.BASANT, JUDGE)**

jsr

**R.BASANT, J**

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006